



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services
<b>VAC Chapter Number:</b>	12VAC30 Chapter 90
<b>Regulation Title:</b>	Methods and Standards for Establishing Payment Rates-Long Term Care Services: Nursing Facility Reimbursement Formula
<b>Action Title:</b>	Limits on Indirect and Direct Care Inflation Adjustments
<b>Date:</b>	GOV ACTION NEEDED BY 06/27/2003

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a change in the Virginia Appropriations Act that must be effective within 280 days from the date of enactment of the Appropriations Act (the 2003 Acts of Assembly, Item 325 MMM) and this regulatory action is not otherwise exempt under the provisions of the Code § 2.2-4006.

This action is intended to be applicable to payments for services in State Fiscal Year 2004 only. Since this is the time period in which this emergency regulation will be effective, there is no

need for DMAS to continue regulating the issue contained in this emergency regulation past the effective period permitted by this emergency action. Therefore DMAS is not seeking approval of a Notice of Intended Regulatory Action in conformance to § 2.2-4007.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.

The Medicaid authority as established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a] provides governing authority for payments for services

### Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The section of the State Plan for Medical Assistance affected by this action is Methods and Standards for Establishing Payment Rates-Long Term Care (12 VAC 30-90-41).

Nursing facility prospective operating ceilings (direct and indirect) and prospective operating rates are adjusted for inflation. The allowance for inflation is based upon the percentage of change in the moving average of the percentage change of the Virginia-Specific Nursing Home Input Price Index, updated quarterly, published by DRI-WEFA, Incorporated (formerly, Standard and Poor's DRI).

The 2003 Acts of Assembly of Item 325 MMM directed the Department of Medical Assistance Services (DMAS) to amend the State Plan in regards to the calculation of direct and indirect care nursing home rate inflation adjustments for State Fiscal Year 2004. This Item directs DMAS to calculate the direct care inflation adjustment provided to nursing facilities effective on July 1, 2003, through June 30, 2004, in a manner to ensure that the increase in payments does not exceed \$8,768,125 of General Funds and \$8,813,838 in Non General Funds. This represents an inflation adjustment of approximately 5.1 percent.

The indirect care inflation adjustments provided to nursing facilities effective on July 1, 2003, through June 30, 2004, shall be calculated in a manner to ensure that the increase in payments does not exceed \$2,325,094 of General Funds and \$2,337,216 of Non-General funds in State Fiscal Year 2004. This represents an inflation adjustment of approximately 1.53 percent.

The proposed methodology will make an estimate, based on existing nursing facility rates and forecasts of patient volume, of the inflation factor that will expend \$8,768,125 of General Funds and \$8,813,838 of Non-General funds for direct care and \$2,325,094 of General Funds and \$2,337,216 of Non-General funds for indirect care payments. This inflation factor will be used to set rates for SFY 2004. The actual increase in expenditures will be slightly more or less than the amount appropriated, based on the difference between the forecasted and actual patient volume in SFY 2004.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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The General Assembly has mandated these changes to the State Plan through the Appropriations Act. Due to the legislative mandate, the agency has no discretion in whether to implement these changes.

## Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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This regulation has no impact on recipients or their families. These changes do not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride, and the assumption of

responsibility for oneself, one's spouse, and one's children and/or elderly parents; strengthen or erode the marital commitment; or increase or decrease disposable family income.